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March 19, 2015

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

I am writing on a matter of great concern to me. On April 9, 2013, the Department of Justice (DOJ) wrote to direct the Wisconsin Department of Public Instruction (DPI) to develop new procedures to ensure the Milwaukee Parent Choice Program (MPCP) is in compliance with Title II of the Americans with Disabilities Act (ADA). In its letter, the DOJ said "[b]ecause the school choice program is a public program funded and administered by the State, the State's administration of the program is subject to the requirements of Title II."

I agree that the State must abide by Title II regulations, but Congress clearly did not intend for private schools to be bound by Title II obligations. Congress devised a careful structure in the ADA, outlining five different areas in which persons with disabilities have legal rights and assigning unique requirements to each area. Title II of the ADA prohibits public entities from discriminating against individuals with disabilities. Title III of the ADA prohibits places of public accommodations, such as private schools, from discriminating against individuals with disabilities. In applying this, the DOJ's own technical compliance manual states that "[p]ublic entities are not subject to title III of the ADA, which covers only private entities" and "[c]onversely, private entities are not subject to title II." The key difference at issue is the standard set for compliance under Title II and Title III. The MPCP should have no effect on the careful balance Congress crafted.

While the program is publically funded, the individual schools participating in MPCP are no more publically funded than a gas station accepting money from a SNAP recipient. Indeed, in 1990, in its analysis of the Milwaukee choice program, the Department of Education determined that federal disability laws do not apply to "placements in private schools resulting from parents' decisions to participate in the Choice Program."

The effect of the argument in your April 9th letter would be to regulate private schools under Title II of the ADA. I have spent my career committed to helping those with disabilities, but Congress did not create differing compliance standards by happenstance. The intent of the law is plainly clear, and this fact has been repeated by the Department of Education and the courts on several occasions. I ask that DOJ remain mindful of this fact during its federal investigation of MPCP. I am worried about the incorrect application of Title II ADA standards and the effect this will have on the viability of private school voucher programs.

Thank you for your attention to this matter.

Sincerely,

F. James Sensenbrenner, Jr.
Member of Congress